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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,830	04/06/2006	Francois Merz	2590-155	5002
23117 7590 10/14/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER SANDERSON, JOSEPH W				
ART UNIT		PAPER NUMBER		
3644				
MAIL DATE		DELIVERY MODE		
10/14/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/574,830

**Applicant(s)**

MERZ, FRANCOIS

**Examiner**

Joseph W. Sanderson

**Art Unit**

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 July 2009 has been entered.

***Drawings***

2. The drawings were received on 20 July 2009. These drawings are acceptable.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7, 9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaski (US 4 974 398).

Regarding independent claim 1:

Kaski discloses a posture gaiter for a horse comprising:

a fore posture horse gaiter (the gaiter is capable of use on the foreleg) having a weight (46) and a means of attaching the gaiter to the leg (34) above the knee and not on the torso (the device is capable of being attached above the knee, and wraps around the leg only).

Regarding claims 2 and 3:

The discussion above regarding claim 1 is relied upon.

Kaski discloses the weight disposed on the gaiter in such a way as to be directed in a predefined orientation towards the inside of the horse (weights go on inside).

Regarding independent claims 4 and 9:

Kaski discloses a hind posture gaiter having a weight (46) and a means for attaching (36) the gaiter on the leg of a horse (as seen in Fig 1), wherein the gaiter is realized such that the weight is completely disposed in the upper half portion of the gaiter (as there is no frame of reference, the side visible in Fig 4 may be considered the "upper half," rendering the weight in the upper half of the gaiter) and the weight is disposed for location close to a hock (as seen in Fig 1, the gaiter is "close" to the hock).

Regarding claim 5:

The discussion above regarding claim 4 is relied upon.

Kaski discloses the gaiter fixed below the hock (as seen in Fig 1).

Regarding claims 6, 7 and 12:

The discussion above regarding claims 4 and 9 is relied upon.

Kaski discloses the weight disposed on the gaiter in such a way as to be directed in a predefined orientation towards the inside of the horse (weights go on inside).

Regarding claim 11:

The discussion above regarding claim 9 is relied upon.

This claim repeats the first step of claim 9, and is thus rejected in the same manner, as no frame of reference connects the position to the horse.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaski ('398) in view of Williams (US 737 186).

Kaski discloses a gaiter having a weight (46) and means for attachment (34) that is capable of being attached to the foreleg of a horse, but does not specifically disclose attaching the gaiter to the fore leg.

Williams teaches a gaiter for a foreleg of a horse (Fig 1).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Kaski to use the device on the foreleg as taught by Williams as this is a well-known alternative placement for predictably altering or supporting the gait of a horse, which may be focused on any specific leg need or desired.

7. Claims 4-7, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaski (US '398) in view of Cook (US 6 554 752).

Regarding independent claims 4 and 9:

Kaski discloses a hind posture gaiter having a weight (46) and a means for attaching (36) the gaiter on the leg of a horse (as seen in Fig 1), wherein the gaiter is realized such that the weight is disposed for location close to a hock, but does not disclose the weight completely disposed in the upper half portion of the gaiter *when attached to the horse*.

Cook discloses a weighted belt for an animal leg having a weight completely in the upper half when attached (the weight in 30) as an alternative design to the lengthwise arrangement (shown in Fig 7).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Kaski to rearrange the weight as taught by Cook as this is a well-known art-recognized alternative placement for predictably weighting the leg.

Regarding claim 5:

The discussion above regarding claim 4 is relied upon.

Kaski as modified renders the gaiter fixed below the hock (as seen in Fig 1).

Regarding claims 6, 7 and 12:

The discussion above regarding claims 4 and 9 is relied upon.

Kaski as modified renders the weight disposed on the gaiter in such a way as to be directed in a predefined orientation towards the inside of the horse (weights go on inside).

Regarding claim 11:

The discussion above regarding claim 9 is relied upon.

This claim repeats the first step of claim 9, and is thus rejected in the same manner.

### ***Response to Arguments***

8. Applicant's arguments filed 20 July 2009 have been fully considered but they are not persuasive.

In response to applicant's argument that the weight of Kaski is not located in the upper half of the gaiter, the claim does not provide for a frame of reference (e.g. when attached to the horse) to prevent the new interpretation of Kaski.

9. Applicant's arguments with respect to claims 1, 4, 8 and 9 and dependencies have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is 571-272-0474. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael R Mansen/  
Supervisory Patent Examiner, Art Unit 3644

/J. W. S./  
Examiner, Art Unit 3644